THAN KOK LEONG

v.

LOW KIM HAI

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN JC
[CIVIL SUIT NO. 1043 OF 1978]
21 JULY 1980

LANDLORD AND TENANT: *Notice to quit by new proprietor - Whether occupant a tenant under oral lease - Whether plaintiff bound by agreement.*

The plaintiff was the new registered proprietor of the premises occupied by the defendant. He served a notice to quit on the defendant, who was a tenant of the former proprietor. But the defendant refused to vacate, claiming an oral lease for 3 years with an option to renew.

Held:

[1] The defendant was a tenant under an oral tenancy for 3 years with an option to renew.

[2] However, the oral tenancy was not binding on the plaintiff. The defendant had failed to endorse his claim on the registered document of title. Similarly, the option to renew was unenforceable.

[3] Furthermore, the plaintiff was not estopped from evicting the defendant. He was not bound by any equities existing against the former proprietor nor by any notice or knowledge that the premises were being occupied by the defendant. Equitable notice has no application in land dealings in Malaysia.

[4] The defendant's counterclaim for specific performance must be dismissed. Section 26 of the Specific Relief Ordinance 1950 has no application to the Torrens system of land tenure.

[Claim allowed.]

Cases referred to:
Eng Mee Yong v. Letchumanan [1979] 2 MLJ 212
T. Damodaran v. Choe Kuan Him [1979] 2 MLJ 267
Ong Chat Pang v. Valippa Chettiar [1971] 1 MLJ 224

Legislations referred to:
Civil Law Ordinance 1956, s. 6
National Land Code 1965, ss. 213, 213(3), 228(2), 316(1), 317(5)
Specific Relief Enactment 1903, s. 3, illustrations (g), (h)
Specific Relief (Malay States) Ordinance 1950, s. 26

Other sources referred to:
Tenure and Land Dealings in the Malay States, David Wong, [1975], pp. 381-387

For the plaintiff - Lee Tat Boon
For the defendant - Sri Ram

JUDGMENT

Mohamed Dzaiddin JC:

This is a claim for possession of premises known as Nos. 99, 99A and 99B, 3rd Mile, Jalan Klang, Kuala Lumpur (hereinafter called "the said premises").

The plaintiff is the registered proprietor of the said premises. He purchased the said premises from one Patricia Perera on or about 8 July 1976. At the time of the purchase, the defendant was a tenant of the former registered proprietor paying a rental of RM950 per month. On 26 January 1978 the plaintiff as the registered proprietor gave notice to quit for vacant possession to the defendant, the said notice expiring on or about 28 February 1978. Despite such notice, the defendant still holds on the said premises and refuses to vacate. The defendant contends that his tenancy is a lease pursuant to an oral agreement made between him and the former landlord who had granted him an oral lease for a period of 3 years commencing 1 January 1974 with an **option** to renew for the same period of 3 years to be exercised by him.

The defendant, in addition, filed a counterclaim against the plaintiff claiming specific performance on the strength of an oral agreement made between him and the former landlord; an injunction to restrain the plaintiff from acting in any manner contrary to the purported lease, and damages and costs.

In reply, the plaintiff contends that the option conferred by the alleged oral tenancy is unenforceable against him and also maintains that as the tenancy was a monthly tenancy, the notice to quit was a valid and proper notice.

As agreed by both Counsel, the question for determination by this Court is whether the defendant is a lessee of the said premises pursuant to an oral lease alleged to have been granted to him by the former landlord. If so, what is the effect of an oral and unregistered lease? Further, if there was such an oral agreement, then the next question is whether the plaintiff is bound by such an agreement.

The defendant in his evidence stated that in July, 1973 he came to Kuala Lumpur from Kota Bharu to help his elder brother, Low Kian Leng in his business at the said premises. Patricia Perera was then the landlord. She used to come to the premises, sometime alone and at times with her son. Some time in 1974, the defendant had a meeting with the landlord's son. After January that year, the defendant with the consent of the landlord, took over the tenancy from his brother. As the conditions of the premises were not good, he had to do some repairs and renovations. It was at this time that he entered into an oral agreement with the landlord's son, which he alleged was with the consent of the landlord, for a three year lease with an option for renewal on the same terms. According to him, the renovations cost him about RM8,000.

Under cross-examination, the defendant stated that it was the landlord's son who informed him about the term of the lease and the option to renew. He also stated that the landlord brought the son to him and told him that she had authorised the son to collect the rent and look after the premises. According to the defendant, the landlord confirmed the terms of the tenancy and the option to renew.

The plaintiff in his evidence denies knowledge of any agreement made between the defendant and former landlord, Patricia Perera. She merely informed the plaintiff that some one was occupying the premises. He, however, instructed his solicitors to do a search of the title and the result was that the title was free from any encumbrances. It was for this reason that he entered into a purchase agreement with the former registered owner, Patricia Perera. The plaintiff continued to receive the rental of RM950 per month paid by the defendant. It was sent to the plaintiff's solicitors.

It should be observed here that neither the plaintiff nor the defendant called the former landlord, Patricia Perera or her son to give evidence. I feel that the evidence of Patricia Perera would be material in this case in determining whether or not there was such an oral agreement alleged to have been made between her and the defendant. The burden of providing such an agreement creating a 3 year lease **with an option to renew** (Emphasis is mine) for a further term is on the defendant.

However, taking the evidence as a whole and in particular that the defendant had spent a considerable sum of money to renovate the premises after several meetings he has had with the former landlord and the son, on the balance of probability, there was such an oral agreement for lease for a period of 3 years **with an option to renew** made between the defendant and the former landlord in 1974 (Emphasis is mine).

Now, the second question is whether this oral agreement made between the defendant and the former landlord is **binding** on the plaintiff who ought the land subsequent to the said agreement?

In my judgment, this oral agreement for a term of three years comes under s. 213 of the National Land Code (i.e., special provisions with respect to tenancies exempt from registration). Under s. 213 Sub-section (3) it is provided that no tenancy exempt from registration shall be binding on any person or body to whom the grantor subsequently transfers the reversion expectant thereon, or to whom he subsequently grants any lease, sub-lease, tenancy or charge.

Section 316(1) of the National Land Code, provides that any person "claiming to be entitled to the benefit of a tenancy exempt from registration" may apply to the Registrar for the endorsement of his claim on the registered document of title to the land affected. This, the defendant has failed to do, although such endorsement by itself is not to be taken as "confirming the validity in respect" of the claim - s. 317(5) National Land code.

Therefore, under s. 213(3) National Land Code, this oral agreement is not binding on the plaintiff.

Likewise, s. 228(2) of the Code provides that any option conferred by any oral tenancy shall be **unenforceable**.

On other material point raised in the defence is that of knowledge or notice of such a tenancy being granted to the defendant. It was submitted that the plaintiff was estopped from evicting the defendant. Counsel for the defendant further submitted that:

(a) a purchaser is bound by all equities enforced against his previous landlord,

(b) actual notice of occupation or possession amounts to constructive notice of the extent and interest of the person in possession.

In answer to that, my view is that the law governing this particular case is the National Land Code 1965 and s. 213(3) does seem to me to impliedly exclude this question of knowledge or notice actual or constructive, because it says that "unless, prior to the date on which the dealing referred to, the tenancy has become protected by an endorsement on the register document of title". See also *Eng Mee Yong v. Letchumanan* [1979] 2 MLJ 212, at p. 214 column B, on equitable doctrine of notice.

I also agree with the submission of the plaintiff's Counsel relating to equitable notice as found in the English Law. This principle has no application in land dealings in Malaysia. By s. 6 of the Civil Law Ordinance 1956.

> the law of England relating to the tenure or conveyance or assurance of succession to any immovable property or any estate, right or interest therein.

is expressly excluded from the general reception of English common law and rules of equity as part of the law of Malaysia. See *T. Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267, at p. 270 column D.

With regard to the counterclaim the defendant is asking for specific performance against the plaintiff and relies on s. 26 of the Specific Relief (Malay States) Ordinance 1950 which reads as follows:

> Except as otherwise provided by this Chapter, specific performance of a contract may be enforced
>
> (a) either party thereto;
>
> (b) any other person claiming under him by a title arising, subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract.

A number of authorities were cited before me to show that the particular Ordinance does not apply to land and land tenure cases to third parties who have given value. For a discussion of this subject matter, see David Wong on *"Tenure and Land Dealings in the Malay States"* [1975] p. 381-387.

For the purpose of this case it is important to consider the decision in *Ong Chat Pang v. Valippa Chettiar* [1971] 1 MLJ 224, the Federal Court decision which touched on s. 26 of the Specific Relief (Malaya States) Ordinance 1950. In this case, A, the registered proprietor, contracted to sell his land to B, but later transferred it by registration to C. B brought an action against both A and C claiming specific performance of the contract of sale and for an order to have the transfer to C rescinded and, instead, the transfer to himself registered. The High Court gave judgment for B and was confirmed by the Federal Court. Although the Federal Court judgment was on the question of indefeasibility, the two Judges, Suffian and Gill, FJJ. did make not reference to s. 26. Gill, FJ seemed to be of the view that the Malaysian indefeasibility provision appears to contain a wide saving proviso which makes a registered title liable to defeat "by operation of law", and this proviso is wide enough to bring in the operation of s. 26.

Counsel for the plaintiff referred in his argument to a number of amendments which were made prior to 1926 and, in particular, Illustrations (g) and (h) to s. 3 of the Specific Relief Enactment 1903. Then in 1926 the FMS Land Code was passed which contained amendments to the Specific Relief legislation which also included the repeal of Illustrations (g) and (h) to s. 3 of the Specific Relief Enactment 1903. The former FMS Code 1926 did not, however, amend the general saving provision of the Specific Relief Legislation to make it clear that its provisions would not affect the law relating to registration of title.

Counsel for the plaintiff appears to echo the submission of Dr. David Wong who states on p. 386 as follows:

> The scope of the saving proviso has been discussed elsewhere and it has been submitted that the proviso should be construed to be applicable to cases where a registered title or interest is determined otherwise than by attack of adverse claims. But, even if the proviso is taken as a qualification of the indefeasibility of title so as to render a registered title or interest vulnerable to defeat by adverse claims either by virtue of statutory law or any other law outside the Torrens system, it still cannot bring in the Specific Relief Legislation which, as has been shown, should have no application to land under the Torrens system.

In the absence of a direct authority on this point and with the greatest respect to Gill, FJ (as he then was), I agree with the submission of the plaintiff's Counsel and Dr. David Wong that s. 26 of the Specific Relief Ordinance 1950 has no application to the Torrens System. In the circumstances, the defendant's counterclaim is dismissed with costs.

I give judgment for the plaintiff in the terms of his prayer in his Statement of Claim except prayer (ii).

Also found at [1983] 1 CLJ 95